

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

| | | |
|-----------------------------|---|------------------------|
| CARBO CERAMICS INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. _____ |
| |) | |
| FINEWAY INC., |) | Jury Trial Demanded |
| |) | |
| Defendant. |) | |
| |) | |

COMPLAINT

CARBO Ceramics Inc. (“CARBO”), by its undersigned attorneys, states the following for its Complaint against FineWay Inc. (“FineWay”).

NATURE OF THE CASE

1. This is an action for trademark infringement and unfair competition under the common law and under Sections 32 and 34 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125. CARBO seeks permanent injunctive relief and monetary damages.

2. As described below, FineWay has used and continues to use trademarks that are confusingly similar—and identical or nearly identical to—CARBO’s federally-registered LITE and ECONOPROP trademarks (collectively the “Trademarks”) that CARBO has long used in connection with its sales and marketing of ceramic proppant used in oil and gas well hydraulic fracturing operations.

3. CARBO has not authorized FineWay to use CARBO’s federally-registered LITE or ECONOPROP trademarks, or colorable imitations thereof, in connection with FineWay’s

sales and marketing of its products, including FineWay's ceramic proppant used in oil and gas well hydraulic fracturing operations. FineWay is improperly trading on the goodwill and reputation of CARBO's Trademarks and creating a strong likelihood of consumer confusion. Unless enjoined by the Court, FineWay's continuing, unauthorized, and infringing use of certain trademarks will cause irreparable harm to CARBO.

THE PARTIES

4. CARBO is a Delaware corporation with a principal place of business located at CARBO Energy Center II, 575 N. Dairy Ashford, Suite 300, Houston, Texas 77079.

5. Upon information and belief, FineWay is a foreign corporation with a place of business located at 825 Tecumseh Road, West Unit 1, Windsor, Ontario, Canada and one or more places of business in China.

6. FineWay has offered to sell and offers to sell its products, including ceramic proppant for use in fracturing operations, in the United States. As one example, FineWay and its representatives personally marketed, promoted, and offered to sell FineWay's products, including ceramic proppant for use in fracturing operations, at the Frac Sand Supply and Logistics Conference in San Antonio, Texas, on or about August 21st and 22nd, 2014. FineWay also markets and offers to sell its ceramic proppant products to consumers in this District and throughout the United States through FineWay's website at <http://www.finewayinc.com/>

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over CARBO's federal claims under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338. This Court has jurisdiction over Plaintiff's related common law claims under 28 U.S.C. §§ 1338 and 1367 and under principles of supplemental jurisdiction.

8. This Court has personal jurisdiction over FineWay because FineWay has committed tortious and infringing acts in San Antonio, Texas, in this State, and in this District that give rise to the present claims, and/or has otherwise made or established contacts with this State and District sufficient to permit the exercise of personal jurisdiction.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391. Venue is proper in this judicial district because CARBO's claims arise from FineWay's trademark infringement and unfair competition within this district.

BACKGROUND

10. CARBO adopted its Trademarks for use in connection with its marketing and sales of ceramic proppant; i.e., ceramic pellets for use in oil and gas well hydraulic fracturing.

11. Since adopting the LITE and ECONOPROP trademarks, CARBO has continued to use the Trademarks in connection with its marketing and sales of ceramic proppant. CARBO's use of the Trademarks has been continuous and valid and has not been suspended or abandoned. CARBO has made substantial investments in creating goodwill in and associated with its Trademarks throughout the United States.

12. CARBO's LITE trademark bears Registration No. 2,920,164 and was registered by CARBO in the U.S. Patent and Trademark Office on January 18, 2005. (See Exhibit A to this Complaint).

13. CARBO's ECONOPROP trademark bears Registration No. 1,756,869 and was registered by CARBO in the U.S. Patent and Trademark Office on March 9, 1993. (See Exhibit B to this Complaint).

14. CARBO's Trademark registrations are valid, subsisting, and in full force and effect, and CARBO has the exclusive right to use the Trademarks in the United States in

connection with the sale and marketing of “ceramic pellets, shot, or spheres for use in oil well and gas well hydraulic fracturing and as a gravel pack material for sand control operations.” (See Exhibits A and B to this Complaint.)

15. In addition to the rights CARBO obtained by federally registering the Trademarks, CARBO has acquired common law rights in the Trademarks through its use of the Trademarks in connection with the sales and marketing of ceramic proppant in the United States.

16. CARBO has spent a substantial amount of money in connection with its marketing, advertising, and promoting the LITE and ECONOPROP trademarks and the ceramic proppant associated with the Trademarks, and CARBO has generated substantial goodwill and customer recognition in the Trademarks.

17. CARBO has derived substantial revenues and profits from its sales of ceramic proppant marketed and sold under the federally-registered LITE and ECONOPROP trademarks.

18. As a result of the continuous marketing and sales of ceramic proppant under the Trademarks throughout the United States, and the oil and gas industry’s widespread use of ceramic proppant, CARBO’s ceramic proppant has come to be, and is now, well and favorably known under the LITE and ECONOPROP trademarks as products of high quality and reliability. The Trademarks are distinctive of CARBO’s ceramic proppant, and valuable goodwill has been generated in and by the Trademarks. Such goodwill was generated long before FineWay adopted the use of confusingly similar trademarks in connection with its marketing and sale of ceramic proppant.

19. The LITE and ECONOPROP trademarks are entitled to immediate and strong protection from infringement, unfair competition, dilution, and injury to the Trademarks and the goodwill represented by and associated with the Trademarks.

**FINEWAY'S TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION**

20. FineWay markets and sells ceramic proppant and other products.
21. FineWay's ceramic proppant is closely related to CARBO's ceramic proppant sold under the federally-registered LITE and ECONOPROP trademarks.
22. FineWay's products are used for the same purpose as CARBO's ceramic proppant sold under the Trademarks; specifically, for oil and gas fracturing operations.
23. FineWay markets ceramic proppant using the mark "LITE," as seen in Exhibit C to this Complaint and at <http://www.finewayinc.com/fineway-lite.html>
24. FineWay markets and describes its "LITE" product as a ceramic proppant developed use in moderate depth natural gas and oil wells. (See Exhibit C and <http://www.finewayinc.com/fineway-lite.html>)
25. FineWay also markets ceramic proppant using the mark "ECONO," as seen in Exhibit D to this Complaint and at <http://www.finewayinc.com/fineway-ld-econo.html>.
26. FineWay markets and describes its "ECONO" product as a ceramic proppant designed for use in shallow and moderate depth natural gas and oil wells. (See Exhibit D and <http://www.finewayinc.com/fineway-ld-econo.html>)
27. FineWay's "LITE" mark used in connection with ceramic proppant is identical and confusingly similar to CARBO's federally-registered LITE trademark.
28. FineWay's "ECONO" mark used in connection with ceramic proppant is confusingly similar to CARBO's federally-registered "ECONOPROP" trademark.

29. Upon information and belief, CARBO used its Trademarks in United States commerce in connection with ceramic proppant long before FineWay adopted and began using the “LITE” and “ECONO” marks in United States commerce.

30. Upon information and belief, CARBO filed its applications for registration of the Trademarks, and the Trademarks were federally registered, long before FineWay’s adoption and use in commerce of the “LITE” and “ECONO” marks.

31. FineWay’s use of the “LITE” and “ECONO” marks in connection with its marketing of ceramic proppant is likely to cause confusion, mistake, or deception that FineWay’s ceramic proppant products are those of CARBO or are otherwise endorsed by, sponsored by, approved by, or associated with CARBO, or is likely to cause confusion, mistake, or deception as to an affiliation, connection, or association between FineWay and CARBO.

32. FineWay and its officers, employees, or representatives have marketed, promoted, displayed, and offered to sell ceramic proppant in this District.

33. As one example, Budong Yang and Joe Cheng, FineWay’s President and Business Development Manager, respectively, attended the Frac Sand Supply and Logistics Conference in San Antonio, Texas, on August 21st and 22nd, 2014, and personally marketed, promoted, displayed, and offered to sell FineWay ceramic proppant to persons and entities in this District.

34. FineWay also markets and offers to sell its ceramic proppant products, including its “LITE” and “ECONO” ceramic proppant, to consumers in this District and throughout the United States via its website at <http://www.finewayinc.com/> and via its website pages found at <http://www.finewayinc.com/fineway-lite.html> and at <http://www.finewayinc.com/fineway-ld-econo.html>

35. As a result of FineWay's conduct, CARBO has suffered and will suffer irreparable injury to itself, its reputation, its Trademarks, and the goodwill associated with and represented by the Trademarks for which there is no adequate remedy at law, entitling CARBO to injunctive relief.

COUNT I: FEDERAL TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1114

36. CARBO realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 35 above.

37. FineWay uses its "LITE" and "ECONO" marks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

38. CARBO uses its federally-registered LITE and ECONOPROP trademarks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

39. FineWay's "LITE" and "ECONO" ceramic proppant products, like CARBO's LITE and ECONOPROP products, are used in connection with oil and gas fracturing operations.

40. FineWay's "LITE" and "ECONO" marks are confusingly similar to CARBO's federally-registered LITE and ECONOPROP trademarks, respectively.

41. CARBO has not authorized or consented to FineWay's use of CARBO's Trademarks or the "LITE" or "ECONO" marks.

42. FineWay's use of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is likely to cause confusion, mistake, or deception that FineWay's ceramic proppant products are those of CARBO or are otherwise endorsed by, sponsored by, approved by, or associated with CARBO, or is likely to cause confusion, mistake, or deception as to an affiliation, connection, or association between FineWay and CARBO.

43. FineWay's use of the "LITE" trademark in connection with ceramic proppant infringes CARBO's federally-registered LITE trademark.

44. FineWay's use of the "ECONO" trademark in connection with ceramic proppant infringes CARBO's federally-registered "ECONOPROP" trademark.

45. Upon information and belief, FineWay has and had knowledge of CARBO's Trademarks and CARBO's use of those Trademarks in connection with CARBO's sales and marketing of ceramic proppant in the United States.

46. FineWay's actions described above were and are intentional, willful, and in reckless disregard for CARBO's trademark rights.

47. FineWay's actions described above will cause irreparable injury to CARBO for which there is no adequate remedy at law.

48. FineWay's actions described above constitute willful trademark infringement under 15 U.S.C. § 1114 and entitle CARBO to the remedies and injunctive relief set forth in 15 U.S.C., including but not limited to 15 U.S.C. §§ 1116 and 1117.

COUNT II: UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. § 1125(A)

49. CARBO realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 48 above.

50. FineWay uses its "LITE" and "ECONO" marks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

51. CARBO uses its federally-registered LITE and ECONOPROP trademarks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

52. FineWay's "LITE" and "ECONO" ceramic proppant products, like CARBO's LITE and ECONOPROP products, are used in connection with oil and gas fracturing operations.

53. CARBO has not authorized or consented to FineWay's use of CARBO's Trademarks or colorable imitations thereof.

54. FineWay's use in commerce of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is likely to cause confusion or mistake, or to deceive customers and potential customers into falsely believing that FineWay and its ceramic proppant products are approved by, sponsored by, endorsed by, associated with, and/or affiliated with CARBO and its ceramic proppant products, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

55. FineWay's use of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is and was intentional, willful, and in reckless disregard for CARBO's rights.

56. FineWay's actions described above will cause irreparable injury to CARBO for which there is no adequate remedy at law.

57. FineWay's actions described above constitute unfair competition and false designation of origin under 15 U.S.C. § 1125 and entitle CARBO to the injunctive relief and remedies set forth in 15 U.S.C., including but not limited to 15 U.S.C. §§ 1116 and 1117.

COUNT III – COMMON LAW TRADEMARK INFRINGEMENT

58. CARBO alleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 57 above.

59. FineWay uses its "LITE" and "ECONO" marks to advertise, market, and offer to sell ceramic proppant in interstate commerce in this District and elsewhere in the United States.

60. CARBO uses its LITE and ECONOPROP trademarks to advertise, market, and offer to sell ceramic proppant in interstate commerce in this District elsewhere in the United States.

61. FineWay's "LITE" and "ECONO" ceramic proppant products, like CARBO's LITE and ECONOPROP products, are used in connection with oil and gas fracturing operations.

62. FineWay's "LITE" and "ECONO" marks are confusingly similar to CARBO's LITE and ECONOPROP trademarks, respectively.

63. CARBO has not authorized or consented to FineWay's use of CARBO's Trademarks or the "LITE" or "ECONO" marks.

64. FineWay's use of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is likely to cause confusion, mistake, or deception that FineWay's ceramic proppant products are those of CARBO or are otherwise endorsed by, sponsored by, approved by, or associated with CARBO, or is likely to cause confusion, mistake, or deception as to an affiliation, connection, or association between FineWay and CARBO.

65. FineWay's use of the "LITE" trademark in connection with ceramic proppant infringes CARBO's LITE trademark.

66. FineWay's use of the "ECONO" trademark in connection with ceramic proppant infringes CARBO's "ECONOPROP" trademark.

67. Upon information and belief, FineWay has and had knowledge of CARBO's Trademarks and CARBO's use of those Trademarks in connection with CARBO's sales and marketing of ceramic proppant in the United States.

68. Upon information and belief, CARBO used its Trademarks in commerce in connection with ceramic proppant long before FineWay adopted and began using the “LITE” and “ECONO” marks.

69. Upon information and belief, CARBO filed its applications for registration of the Trademarks, and the Trademarks were federally registered, long before FineWay’s adoption and use in commerce of the “LITE” and “ECONO” marks.

70. FineWay’s actions described above were and are intentional, willful, and in reckless disregard for CARBO’s trademark rights.

71. FineWay’s actions described above will cause irreparable injury to CARBO for which there is no adequate remedy at law.

72. FineWay’s actions described above constitute common law trademark and entitle CARBO to monetary damages and permanent injunctive relief.

COUNT IV – COMMON LAW UNFAIR COMPETITION

73. CARBO alleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 72 above.

74. FineWay uses its “LITE” and “ECONO” marks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

75. CARBO uses its federally-registered LITE and ECONOPROP trademarks to advertise, market, and offer to sell ceramic proppant in interstate commerce in the United States, including in this District.

76. FineWay’s “LITE” and “ECONO” ceramic proppant products, like CARBO’s LITE and ECONOPROP products, are used in connection with oil and gas fracturing operations.

77. CARBO has not authorized or consented to FineWay's use of CARBO's Trademarks or colorable imitations thereof.

78. FineWay's use in commerce of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is likely to cause confusion or mistake, or to deceive customers and potential customers into falsely believing that FineWay and its ceramic proppant products are approved by, sponsored by, endorsed by, associated with, and/or affiliated with CARBO and its ceramic proppant products, in violation of CARBO's common law rights.

79. FineWay's use of the "LITE" and "ECONO" marks in connection with its marketing of ceramic proppant is and was intentional, willful, and in reckless disregard for CARBO's rights.

80. FineWay's actions described above will cause irreparable injury to CARBO for which there is no adequate remedy at law.

81. FineWay's actions described above constitute common law unfair competition and entitle CARBO to the injunctive relief and other remedies set forth below.

PRAYER FOR RELIEF

WHEREFORE, CARBO respectfully requests judgment and relief against FineWay as follows:

1. A permanent injunction prohibiting FineWay and any employees, officers, directors, agents, representatives, successors, affiliates, assigns, and any entity owned or controlled by FineWay, and all those in active concert and participation with FineWay, from:

a. using the "LITE" trademark or any other mark or designation that is confusingly similar to CARBO's federally-registered LITE trademark;

b. using the “ECONO” trademark or any other mark or designation that is confusingly similar to CARBO’s federally-registered ECONOPROP trademark; and

c. using any trademark, service mark, name, logo, designation, domain name, or source designation that is a copy, reproduction, colorable imitation, or confusingly similar to CARBO’s federally-registered LITE and ECONOPROP trademarks, or is likely to cause consumer confusion or mistake or to deceive consumers that FineWay’s ceramic proppant products originate from CARBO or are authorized by, sponsored by, endorsed by, or otherwise affiliate with CARBO.

2. An award to CARBO of monetary remedies and damages in an amount to be determined by a trier of fact for all harm caused by FineWay’s infringement and unfair competition, including FineWay’s profits, the damages sustained by CARBO, CARBO’s costs incurred in this action, CARBO’s reasonable attorney fees, and treble damages and profits as authorized by law, including the Lanham Act, 15 U.S.C.

3. An award to CARBO of interest, including prejudgment interest, on the foregoing amounts.

4. A direction to FineWay to provide for the destruction of all products, labels, signs, prints, package, wrappers, catalogs, brochures, and advertisements located in the United States and in FineWay’s possession or control bearing the “LITE” or “ECONO” marks or any word, term, name, symbol, designation, description, or representation that is a reproduction, counterfeit, copy, or colorable imitation of CARBO’s federally-registered LITE and/or ECONOPROP trademarks.

5. An award to CARBO of such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), CARBO demands a trial by jury of all claims so triable.

Dated: October 14, 2014

/s/ Tom Van Arsdel _____
Tom Van Arsdel
Texas State Bar No. 24008196
WINSTEAD PC
1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002
(713) 650-8400 phone
(713) 650-2400 facsimile
tvansdel@winstead.com

Bart A. Starr
Texas State Bar No. 24089709
Pro hac vice application forthcoming
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 phone
(214) 745-5390 facsimile
bstarr@winstead.com

Attorneys for CARBO Ceramics Inc.